

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL LEWIS, LAUREN TAYLOR,  
C.L., a minor, and B.L., a minor, by and  
through their guardian ad litem,

Plaintiffs,

v.

COUNTY OF SAN DIEGO, COUNTY  
AGENT IAN BAXTER, COUNTY  
AGENT N. QUINTEROS, COUNTY  
AGENT SUPERVISOR BENITA  
JEMISON, COUNTY AGENT ABIGAIL  
JOSEPH, COUNTY AGENT  
SUPERVISOR ANTONIA TORRES,  
COUNTY AGENT SUPERVISOR  
ALFREDO GUARDADO, COUNTY  
AGENT BROOKE GUILD, and DOES 1-  
50,

Defendants.

Case No.: 3:13-cv-02818-H-JMA

**ORDER DENYING PLAINTIFF'S  
MOTION TO WITHDRAW  
ADMISSIONS**

[Doc. No. 108]

On November 27, 2013, this action was removed to Federal Court. (Doc. No. 1.) Plaintiff Michael Lewis ("Plaintiff") was initially represented by counsel but moved to relieve his counsel and proceed pro se on December 16, 2015. (Doc. Nos. 42, 45.) The Court granted Plaintiff's motion on January 8, 2016. (Doc. No. 46.) On June 17, 2016,

1 Defendant County of San Diego (“Defendant”) served Plaintiff with Requests for  
 2 Admissions. (Doc. No. 89.) Plaintiff failed to respond to the requests and Defendant  
 3 moved to compel on September 19, 2016. (*Id.*) Plaintiff did not oppose the motion to  
 4 compel and the Court ordered the requests be deemed admitted if Plaintiff failed to  
 5 respond by October 14, 2016. (Doc. No. 95.) Plaintiff failed to timely respond and the  
 6 requests were deemed admitted.

7 On January 6, 2017, the last day of discovery, Plaintiff delivered a response to  
 8 Defendant’s Requests for Admissions and on January 14, 2017, Plaintiff filed a motion to  
 9 withdraw his admissions. (Doc. No. 108.) Defendants opposed the motion on February  
 10 15, 2017. (Doc. No. 135.) Plaintiff replied on February 22, 2017. (Doc. No. 148.) On  
 11 March 1, 2017, the Court heard arguments on the matter. (Doc. No. 153.) Plaintiff  
 12 Michael Lewis was represented by Attorney Stephen Allen King and Defendants were  
 13 represented by Attorneys David Brodie and Erica Rocio Cortez. (*Id.*)

#### 14 **ANALYSIS**

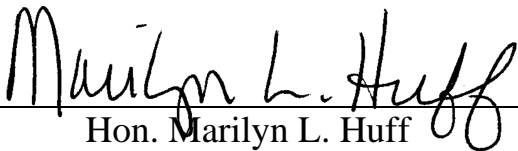
15 Requests for admissions are deemed admitted unless a party responds within 30  
 16 days. Fed. R. Civ. P. 36(a)(3). Admitted matters are conclusively established. Fed. R.  
 17 Civ. P. 36(b). A Court may allow a party to withdraw admitted matters if “it would  
 18 promote the presentation of the merits of the action and if the court is not persuaded that  
 19 it would prejudice the requesting party in maintaining or defending the action on the  
 20 merits.” *Id.* The first prong of the test in Rule 36(b) is met “when upholding the  
 21 admissions would practically eliminate any presentation of the merits of the case.”  
 22 *Conlon v. U.S.*, 474 F.3d 616, 622 (9th Cir. 2007) (quoting *Hadley v. U.S.*, 45 F.3d 1345,  
 23 1348 (9th Cir. 1995)). The second prong requires the party relying on the deemed  
 24 admissions to show prejudice. *Id.* The prejudice must be more than simply the  
 25 additional burden of now having to convince the factfinder of the truth of the admitted  
 26 matters. *Id.* Relief under Rule 36 is discretionary, not mandatory, and is reviewed for  
 27 abuse of discretion. *Id.* at 624-25. Because Defendants would be prejudiced by such a  
 28 late withdrawal of admissions, the Court denies Plaintiff’s motion.

Under the operative scheduling order, discovery concluded on January 6, 2017. (Doc. No. 94.) If Plaintiff is now allowed to withdraw his admissions, Defendants would be unable to obtain additional facts needed to prove portions of their case. For example, Defendants' Request for Admission No. 19 asked Plaintiff to admit he did not have a government-issued medical marijuana card at the time of the removal of his children. (Doc. No. 89-3 at 4.) Because this fact was deemed admitted, Defendant did not conduct further inquiry into the matter during Plaintiff's deposition. (Doc. No. 135-2 ¶ 2.) Plaintiff now denies Request for Admission No. 19. Id. Because discovery has closed, however, Defendant is unable to seek further clarifications from Plaintiff or additional evidence to prove the previously admitted matter. Such difficulties in proving matters once thought admitted are precisely the type of prejudice addressed by Rule 36(b). Hadley, 45 F.3d at 1348 ("[the prejudice] relates to the difficult a party may face in proving its case, e.g., . . . because of the sudden need to obtain evidence with respect to the questions previously deemed admitted").

Plaintiff failed to respond to Defendants' initial requests for admissions. Plaintiff also failed to respond after the Court issued an order warning the Requests for Admission would be deemed admitted if Plaintiff failed to respond. Plaintiff then waited until the last day of discovery to take action regarding the admissions, preventing Defendants from conducting additional discovery regarding the previously-admitted matters. After reviewing the record as a whole, the Court finds Defendants would be prejudiced by a withdrawal of Plaintiff's admissions at this late stage in the litigation and denies Plaintiff's motion.

**IT IS SO ORDERED.**

DATED: March 3, 2017

  
 Hon. Marilyn L. Huff  
 United States District Judge